

**Petroleum Helicopters, Inc. and Robert J. Davies,
Richard N. Dutson, and Robert C. Mitchell.**
Cases 15-CA-7963, 15-CA-7964, and 15-CA-7982

July 30, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND HUNTER

On February 12, 1982, Administrative Law Judge Richard J. Linton issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed limited exceptions, a supporting brief, and an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order, as modified herein.³

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In sec. III.E.2, of his Decision, the Administrative Law Judge stated that it was Respondent's vice president and chief pilot, Clay, who initially fired employee Mitchell whereas it is clear that Area Manager Shugart initially discharged Mitchell at the instruction of Respondent's vice president of Domestic Operations, Dougherty. This inadvertent error is insufficient to affect the results of our decision.

No exceptions were filed to the Administrative Law Judge's dismissal of the allegation that Respondent, through Area Manager Bundy, violated Sec. 8(a)(1) of the Act by informing employees at its Intercoastal base that wage increases would be withheld.

² In view of the Administrative Law Judge's finding, with which we agree, that employee Mitchell was discharged because of his union activities in violation of Sec. 8(a)(3) of the Act, we find it unnecessary to pass on his further conclusion that Mitchell's discharge was additionally unlawful under *Alleluia Cushion Co., Inc.*, 221 NLRB 999 (1975), because he exercised his rights under FAA regulations to refuse to fly an aircraft. In so doing, we note that, as is clear from the Administrative Law Judge's findings, Respondent seized on this latter incident as a pretext to discharge Mitchell because of his union sentiments. Thus, we note that Mitchell's refusal to fly the aircraft was not insubordination and that Respondent's director of safety, Cadoret, acknowledged that a pilot has final authority under FAA regulations to ground an aircraft he feels is not airworthy. We also agree with the Administrative Law Judge's finding that the other grounds advanced to justify Mitchell's discharge, including his purported ignorance of aerodynamics, were pretextual. In so doing, however, we do not rely on his finding that Clay himself inadequately defined a physics term while faulting Mitchell for his inability to define it.

³ The Administrative Law Judge inadvertently failed to include in his recommended Order a reinstatement provision for employees Dutson, Mitchell, and Davies. We shall modify the recommended Order accordingly. The Administrative Law Judge also did not provide in his recommended Order that Respondent make whole employee McJunkin for monetary losses, if any, resulting from his discriminatory transfer, noting

Based on the evidence set forth below, we agree with the Administrative Law Judge's conclusion that Respondent violated Section 8(a)(1) of the Act by transferring employee McJunkin from its Sabine Pass base and subsequently refusing his requests to retransfer because of his union and/or protected concerted activities.

McJunkin was a member of the Union's board of directors and an activities coordinator. Based on credited testimony, the Administrative Law Judge found that at the outset of the Union's formation Respondent's vice president, Dougherty, asked McJunkin why he had become involved with the Union and, when McJunkin responded, Dougherty stated he was disappointed with him. Dougherty further stated that he thought McJunkin had a good future with the Company but warned him that that would not be so if he continued his activities.⁴ Thereafter, Dougherty informed McJunkin that this transfer from the Sabine base was due to Area Manager Ross' report that he was a disruptive influence. As one example Dougherty mentioned McJunkin's having scheduled, during Ross' absence, a meeting of pilots to discuss problems concerning various working conditions to be brought to the attention of headquarters. Further, Respondent's personnel manager, Michel, testified that McJunkin was "continually stirring up" the employee factions that had developed during the union campaign. Finally, after McJunkin requested a retransfer to Sabine, Dougherty told him that he was "still being punished" and that he was not going to send him back to Sabine, and said he thought that McJunkin would have been "ashamed of himself" for not resigning when the Union lost the election.

The Administrative Law Judge found, and we agree, that Dougherty's telling McJunkin that he was being transferred in reprisal for his union and/or protected concerted activities and that his job transfer opportunities would continue to be withheld because of such activities was clearly violative of Section 8(a)(1) of the Act. Further, based on the foregoing and the record as a whole, we find it clear that, consistent with Dougherty's state-

that counsel for the General Counsel did not request such a remedy. However, counsel for the General Counsel offered no affirmative reason for not seeking such a remedy but merely stated that he was unaware whether McJunkin had suffered any monetary losses. Furthermore, as noted by the Administrative Law Judge, the discriminatory transfer may have resulted in increased commuting expenses for McJunkin. We find a make-whole remedy necessary to effectuate the policies of the Act and we shall modify the recommended Order accordingly.

We also shall modify the Administrative Law Judge's recommended Order to require Respondent to expunge from its files any reference to the unlawful discharges of Dutson, Mitchell, and Davies. See *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

⁴ This conversation was considered for background purposes only as it occurred outside the 10(b) period.

ments, Respondent transferred McJunkin and subsequently denied his requests for retransfer because of his union and/or protected concerted activities, and thereby violated Section 8(a)(1) and (3) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Petroleum Helicopters, Inc., Harahan, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as new paragraph 2(a) and reletter the subsequent paragraphs accordingly:

"(a) Offer Richard N. Dutson, Robert C. Mitchell, and Robert J. Davies immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed."

2. Insert the following as new paragraph 2(c) and reletter the subsequent paragraphs accordingly:

"(c) Make Daniel E. McJunkin whole for any monetary losses he may have suffered by reason of Respondent's unlawful transfer of him, with interest."

3. Insert the following as new paragraph 2(d) and reletter the subsequent paragraphs accordingly:

"(d) Expunge from its files any references to the discharges of Richard N. Dutson, Robert C. Mitchell, and Robert J. Davies, and notify them in writing that this has been done and that evidence of the unlawful discharges will not be used as a basis for future personnel actions against them."

4. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

Accordingly, we give you these assurances:

WE WILL NOT tell you that you are being transferred, or transfer you, in retaliation for your union or other protected concerted activities.

WE WILL NOT tell you that transfer opportunities are being withheld from you as punishment for your union activities, or deny such transfer opportunities to you because of your union sentiment or activities.

WE WILL NOT tell you that transfer opportunities will continue to be withheld because of your union or protected concerted activities.

WE WILL NOT discourage you from joining or supporting Professional Helicopter Pilots Association, or any other labor organization, by unlawfully discharging any of you or otherwise discriminating against any of you with respect to your hire or tenure of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act.

WE WILL offer Richard N. Dutson, Robert C. Mitchell, and Robert J. Davies immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings they may have suffered as a result of our discrimination against them with interest.

WE WILL make whole Daniel E. McJunkin for any monetary losses he may have suffered as a result of our discrimination against him, with interest.

WE WILL expunge from our files any references to the discharges of Richard N. Dutson, Robert C. Mitchell, and Robert J. Davies, and WE WILL notify them that this has been done and that evidence of the unlawful discharges will not be used as a basis for further personnel actions against them.

PETROLEUM HELICOPTERS, INC.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge: These cases were heard before me in Lafayette, Louisiana, on November 16, 17, and 18, 1981, pursuant to the January 27, 1980, consolidated complaint and notice of hearing issued by the General Counsel of the National Labor Relations Board through the Regional Director for Region 15 of the Board. The complaint is based on charges filed by Robert J. Davies (Davies), Richard N. Dutson (Dutson), and Robert C. Mitchell (Mitchell) against Petroleum Helicopters, Inc. (Respondent or PHI).

In the complaint the General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by threatening employees with discharge and by other specified conduct, and Section 8(a)(3) of the Act by discharging Dutson on June 20, 1980, Mitchell on November 6, 1980, and Davies on November 25, 1980, because of their activities on behalf of Professional Helicopter Pilots Association, Incorporated (PHPA or the Union herein).¹

By its answer, Respondent admits certain allegations, but denies that it has violated the Act in any manner.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Delaware corporation with its principal office in Harahan, Louisiana, and operational facilities throughout the United States and overseas, provides helicopter services primarily to the petroleum industry. During the preceding 12 months, a representative period of all events material herein, Respondent did a gross volume of business in excess of \$500,000, and purchased and received goods and materials valued in excess of \$50,000 which were shipped to Respondent in the State of Louisiana directly from points located outside the State of Louisiana. Respondent admits, and I find, that it is an employer within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that during the relevant times herein Professional Helicopter Pilots Association (PHPA) was a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The current organizing campaign² began in early 1979 when a group of Respondent's approximately 700 domes-

tic pilots and pilot-mechanics (the latter being licensed mechanics as well as licensed pilots) formed the nucleus of what became PHPA. Richard Dutson, one of the Charging Parties herein, personally delivered a copy of PHPA's articles of incorporation to the office of Carl Dougherty, vice president and director of Respondent's domestic operations, in March 1979 (G.C. Exh. 11). In a five-page memorandum distributed or mailed "To All PHI Pilots" in November 1979, PHPA described its origin and explained to all pilots the reasons for its formation. *Safety* is stressed as a primary reason for PHPA's existence.

PHI notified its employees that it opposed the organizing campaign. For example, in a memorandum dated November 21, 1979, and addressed to all PHI employees, Vice President and General Manager Frank W. Lee stated, *inter alia*:

You can rest assured we intend to fight these malcontents with every legal means at our disposal.

In a memorandum of the same date to all PHI pilots, Lee advised them that PHI president, R. L. Suggs, on leaving for a trip to the Far East, asked that Lee send them the memo (slightly over a page in length) describing PHI's position. Suggs' message included the words that:

We want to assure you that we do not intend to hand over this company to any individual or any group of malcontents so that they can destroy everything that we have worked so hard to build here at PHI.

And:

If it comes to a confrontation in a Labor Board election, we will point out the danger to your job security and the welfare of your families if this union should succeed in its purpose. Once you understand the real truth, we know that we will be able to depend upon you to help us defeat this dangerous threat.

On December 5, 1979, PHPA filed a representation petition in Case 15-RC-6578. Unable to agree on the unit placement of the lead pilots, the parties offered evidence in a representation hearing. References in the record to the hearing place it in December 1979, but the exact date is not specified. The Regional Director, in his Decision and Direction of Election dated January 22, found the lead pilots to be supervisory.³ PHI requested review by the Board. On February 15 the Board telegraphically notified the parties it had concluded that "a substantial issue is raised concerning the supervisory status of the lead pilots," but that "such issue can best be resolved through the challenge procedure." A mail ballot

supervisors. *Petroleum Helicopters, Inc.*, 184 NLRB 60, 61 (1970). Although the lead pilot status is raised in this case, it is not necessary for me to resolve the issue.

³ Contending that the duties of its lead pilots had changed since the Board's decision reported at 184 NLRB 60, PHI apparently relied largely upon the testimony of James I. Michel, director of personnel. The Regional Director observed that Michel did not have personal knowledge of the duties and responsibilities of lead pilots.

¹ All dates shown are for 1980 unless otherwise indicated.

² Little information appears in the record concerning an earlier campaign by International Association of Machinists & Aerospace Workers, AFL-CIO, other than the fact that lead pilots were found to be statutory

election was thereafter conducted. The ballots were mailed about February 15 and counted on April 5. Although the tally of ballots is not given in the record, it is clear that any challenges were not determinative, for a certification of results (certifying that PHPA lost the election) issued on April 14.

B. Principal Issues

The primary question is whether Respondent unlawfully discharged the individual Charging Parties on the dates shown:

Richard N. Dutson—June 26, 1980

Robert C. Mitchell—November 6, 1980

Robert J. Davies—November 25, 1980

Aside from some allegations of independent restraint and coercion, the complaint alleges that PHI unlawfully transferred a pilot (Daniel E. McJunkin) from the Sabine Pass, Texas, base, and thereafter denied his requests to be returned. The General Counsel seeks only a remedial notice regarding McJunkin, for McJunkin ultimately was transferred to the base of his choice. All four—Dutson, Mitchell, Davies, and McJunkin—were active in PHPA.

C. Daniel E. McJunkin

McJunkin credibly testified that he was elected to PHPA's board of directors in about March 1979. Shortly thereafter, a PHPA newsletter was distributed reflecting McJunkin's status as schedule 2 coordinator (apparently one who coordinates activities of certain PHPA representatives). About a week or so later, in March or April 1979, PHI Vice President Carl Dougherty spoke to McJunkin at Respondent's Sabine Pass, Texas, base.

Dougherty asked McJunkin why he had become involved (with PHPA) and asked him what he was trying to do to PHI. McJunkin explained that he thought the pilots needed a voice in the decisions being made by PHI and that PHPA was strictly an internal organization of PHI pilots. Dougherty said he was disappointed with McJunkin and that he thought the pilot had a good career future with PHI.⁴ However, Dougherty warned that would not be so if McJunkin continued his PHPA activity. McJunkin responded that he thought the pilots' PHPA efforts were necessary.⁵

About June 15 Dougherty, in the presence of Jack Ross, area manager (the new title of base supervisor) for Sabine Pass, and Lead Pilot Jim Scott, informed McJunkin that effective the next morning he was being transferred to the Cameron, Louisiana, base some 35 miles away.⁶ When McJunkin asked why, Dougherty said be-

cause Ross had reported that he was a disruptive influence on his ability to supervise the base.

Dougherty cited two events. The first involved McJunkin's moving a "No Parking" sign's location on the parking lot about a month before his transfer. McJunkin said that was true, but Lead Pilot Scott knew about it, and Ross (apparently away at the time) did not complain on his return. Dougherty then asked Scott about it, and Scott confirmed that he was aware that McJunkin was moving the sign.⁷

Dougherty then raised the second point which he described as McJunkin's organizing a meeting of the pilots to discuss problems to be sent to headquarters at Lafayette, Louisiana, by the advisory employee system, and that McJunkin had held the meeting at a time to preclude Ross from participating. McJunkin testified that he told Dougherty that he arranged the meeting for a time convenient to most of the pilots, and that, while he knew Ross was on vacation, Lead Pilot Scott was present for the meeting. Indeed, McJunkin told Dougherty that he and Ross had discussed in advance certain shortcomings of the advisory employee system (apparently utilized by PHI as an informal sounding board for pilot problems), and that it was Ross' suggestion that each base resolve petty grievances, such as an inadequate supply of toilet paper, rather than submitting them to top management at Lafayette.⁸

Dougherty testified that when Sabine Base Supervisor (Area Manager) John Kangas retired, he decided to operate the base through lead pilots, and without a base supervisor, since Sabine is a small base. This did not prove satisfactory because PHI's customers requested that someone be at the base whom they could talk to about business when the lead pilots were flying. So Dougherty assigned Jack Ross to be the base supervisor.⁹

It is undisputed that a lot of employee unrest developed at the Sabine base under Ross. Rumors existed that Ross and the base secretary were having an affair. A utility employee apparently carried gossip back and forth between Ross and the pilots. The pilots did not perceive Ross as being truthful. After the election, Director of Personnel James I. Michel made an inspection visit to the base and found it "just about in total chaos." Dougherty and Vice President of Maintenance Burns thereafter visited the Sabine Pass base.

Michel testified that McJunkin "got the employees involved in what I considered nit picking situations about what kind of cokes go into the Coke machine." More-

kin, he could have transferred the pilot to bases 300 miles or more distant.

Although complaint par. 7(a) alleges the transfer to be violative of Sec. 8(a)(1) of the Act, the General Counsel does not seek a remedial transfer. While the transfer to Cameron apparently did not affect McJunkin's pay, it may have increased his expenses commuting to work. However, the General Counsel seeks only a notice remedy.

⁷ While another pilot and two mechanics were moving the sign, in order to give more parking space to PHI employees who drove to work, McJunkin went and informed Scott who said he did not know whether Ross would approve. McJunkin responded that they would move it back if Ross did not approve. McJunkin heard nothing more on the subject.

⁸ McJunkin testified that earlier PHI had ceased using the advisory employee system, but reinstituted it following the formation of PHPA.

⁹ While it is not clear when this occurred, it apparently was in 1979.

⁴ McJunkin, in September 1978, had informed Dougherty in writing that he was interested in becoming base supervisor of the Sabine base after John Kangas retired from that position. McJunkin lived in the nearby city of Beaumont, Texas. Dougherty wrote back indicating that he and McJunkin could talk about it on Dougherty's next visit, but that PHI did not select supervisors on the condition they be assigned to certain bases.

⁵ The General Counsel offered this conversation for background purposes.

⁶ Cameron, Louisiana, would be 35 miles farther for McJunkin to travel since Sabine Pass is situated roughly between Beaumont and Cameron. Dougherty testified that had he been wanting to punish McJunkin,

over, Michel testified, "Mr. McJunkin was continually stirring up the pilots as to keep the factions that developed during the [union] campaign going."

Michel recommended to Dougherty that the latter visit the base. Dougherty did so, and he was accompanied by Vice President Burns. Dougherty testified that he made the decision to transfer McJunkin "because all the problems seemed to be centered around him, as far as the rumors and different groups breaking off into splinter groups, fighting among themselves." He also decided to transfer Ross at a later time. Some 6 weeks later Ross was transferred and Byron Stone was assigned to replace Ross at Sabine Pass. According to Dougherty, some mechanics were transferred at the same time as McJunkin.

Describing McJunkin as "very ambitious," Dougherty theorized that after McJunkin was not made base supervisor at Sabine Pass, he began trying to undermine Ross by spreading rumors about Ross and the secretary. Moreover, Dougherty testified, McJunkin held several meetings with the mechanics. On cross-examination Dougherty testified as follows:

Q: These meetings with the mechanics, what were they about?

A: I have no idea, I wasn't involved in it. But he has a couple of separate meetings with the mechanics that was reported to me. I don't know what was said in the meetings, but that was a very unusual situation.

Q: Is there some problem with the Coke machine?

A: Yes. We had all kind of little minor problems at the base. It all culminated in the changes that we made. I don't remember the little items like the Coke machine. I got this from the different people. The mechanics wanted one kind of coke, one kind of drink in the machine, but it's just little things like that that lead up to the big things. I said, "Well let's just clean out the base and make changes."

Q: So it's just a lot of complaints about the working conditions?

A: That's correct.

Q: The job situation?

A: That's correct.

Shortly after Stone was assigned as the area manager at Sabine Pass, McJunkin requested to be retransferred to Sabine from the Cameron, Louisiana, base. Dougherty visited Cameron in late August 1980 and told McJunkin:¹⁰

Well, you've made your bed. Now you're going to have to lie in it. As a matter of fact, I'm kind of surprised. I would have thought that you'd been ashamed of yourself for not resigning when the vote—when the results of the election were announced.

McJunkin asserted that he had no desire to quit PHI, and that while he felt the pilots should have a chance "to participate," the vote was no and the matter was over. In light of that, McJunkin asked if he could return to

Sabine.¹¹ Dougherty replied, "You're still being punished. I'm not going to send you back to Sabine."

McJunkin asked if he could participate in PHI's seniority-based base selector system.¹² Dougherty grudgingly conceded on that with the comment that he, Dougherty, had to live with the seniority-based selection system.

Thereafter, McJunkin learned from other pilots that he had twice been passed over for less senior pilots for a position at Galveston.¹³ After talking with some intermediate officials on the subject, McJunkin, about September 1980, telephoned Dougherty and asked him whether he was still being held in Cameron. Dougherty replied yes, that he intended to leave McJunkin at Cameron under Area Manager Messer a while longer. When McJunkin asked if he was still being punished, Dougherty answered, "Well, you can say that."¹⁴ For all practical purposes, McJunkin testified, he dropped the issue after that. Eventually, about August 1981, McJunkin accepted a voluntary transfer to Rockport, Texas, for his family had moved to Austin, Texas, in the interim.

Conceding that he met personally with McJunkin once on the subject of his transfer request, Dougherty denies that he told McJunkin he was being punished. According to Dougherty, McJunkin used the term, but Dougherty told him that, because of his problems at Sabine, he was to stay at Cameron under Area Manager Messer for as long as Dougherty felt necessary. Dougherty approved McJunkin's transfer to the Rockport, Texas (near Corpus Christi), base because he "had gone along for a long time with no problems"

Conclusion

Largely for demeanor factors, I credit McJunkin over Dougherty, and I find that Respondent violated Section 8(a)(1) of the Act as alleged in complaint paragraphs 7(a), (b), and (c).¹⁵ In any event, Respondent practically concedes that it transferred McJunkin because of his PHPA and protected concerted activities of meetings with the pilots and mechanics over job conditions.

D. Richard N. Dutson

Dutson, a former U.S. Army helicopter pilot, had been employed as a helicopter pilot by PHI for some 6 years before he was discharged on June 26. It is undisputed that on the night of June 23 Dutson, as requested by maintenance personnel, did a "hover" check on a helicopter. As Dutson lowered the helicopter at the conclusion of the hover, the aircraft settled onto a maintenance stand (a short ladder stand) which punctured the vehicle's fuselage. Dutson was fired over this event.

Dutson was one of the foremost supporters of PHPA. He was one of the founders of PHPA, served on its

¹¹ McJunkin testified that the Sabine base is a 45-minute drive from his Beaumont home.

¹² The system utilizes a list of pilots by seniority and type of aircraft the pilot is flying.

¹³ Galveston, Texas, appears to be no closer to Beaumont than Cameron, Louisiana, and the record is unclear as to why McJunkin felt Galveston to be a more advantageous location than Cameron.

¹⁴ Complaint par. 7(c).

¹⁵ Moreover, I take note of the fact that McJunkin is currently employed by Respondent, yet testified adversely to PHI's interests.

¹⁰ Dougherty's remarks form the basis for complaint par. 7(b).

board of directors, appeared at the NLRB representation hearing, and was the only PHPA representative present when the mail ballots were opened and counted in April 1980.

Since December 1979, Dutson had been flying night duty from Respondent's Intracoastal City, Louisiana, base. As most of the maintenance on Respondent's aircraft was performed at night, Dutson's duties included assisting the mechanics in the performance of their maintenance function. He piloted a Bell 212 helicopter.

On the night of the incident Dutson agreed to hover test a 206L model helicopter. Dutson had never qualified to operate such a helicopter, and additionally, of course, was not currently qualified in the particular aircraft.¹⁶ Although Dutson reviewed various regulations and manual provisions before undertaking the hover check, he failed to notice the provision in PHI's operations manual which provides that night test flights by pilots flying alone would be permitted "only by pilots approved for night flight and only in helicopters in which the pilot is presently FAR/135 current." The hover check would qualify as a night test flight, and Dutson was not currently qualified to operate the 206L.

Before going to get the mechanic, Dutson walked around the helicopter and inspected it for obstructions. He then walked toward the trailer to meet the mechanic, Russell Martin. Dutson testified that he entered the helicopter while Martin said he was going to check on his "stuff" and make sure everything was okay. Martin testified that they both got in the aircraft and then he looked back to make sure that the main rotor blade tie-down was released and that his instruments were properly attached. There is no dispute that Dutson did the usual preflight inspection of instruments inside the aircraft. Thereafter, Dutson raised the helicopter to a point approximately 3 to 5 feet off the ground, hovered a minute or two and then sat back down. Both Dutson and Martin testified that they could tell something was wrong in that the aircraft did not feel right when it sat down. On inspecting, they found a maintenance stand lodged underneath the aircraft. Dutson testified that the mechanics were able to pull the stand from underneath the aircraft, whereas Martin testified that Dutson had to reenter the helicopter and pull it into a slight hover again so that he could pull the stand out and set the helicopter back down.

Martin testified that the lead mechanic asked him if he had left the stand there, and he told the lead mechanic that he thought he had moved it over to the side and put it on the grass after he had finished using it.

Dutson testified that he believes the mechanic placed the maintenance stand over the left skid just forward of the aft cross tube after Dutson had made his inspection.

Dutson was suspended while Respondent investigated the matter. The incident occurred on Sunday night; and,

on the following Thursday, Vice President and Chief Pilot Stanley R. Clay called Dutson and requested him to come to the Lafayette headquarters. Clay told Dutson that PHI considered this a very serious matter and did not see how Dutson could have missed seeing the stand. Dutson responded by saying that he thought the mechanic had left it there. When Clay said he could not find that Dutson was checked out in the helicopter, Dutson replied that he was not. Clay asked him if he did not know he was supposed to be (qualified) in order to do a night test flight. Dutson said no. Clay replied that such was no excuse and that he should have known what the operations manual provided. Clay then said he had talked the matter over with Vice President Dougherty and they had decided to terminate Dutson.

Dutson asked if the incident was the only basis for the discharge or if there was anything else in his file which warranted the discharge. Clay flipped through the papers in the file and came to an incident which occurred about 5 years previously in which he said Dutson had used poor judgment in a situation when a helicopter lost the hydraulic system in flight. In any event, Clay stated that he did not want to argue about the matter, "That's just the way it is and we just feel you'd be happier elsewhere."

At the hearing Dutson explained that the hydraulic's incident occurred about 5 years ago when he was ferrying two passengers from an offshore location. He discovered that the hydraulic fluid was leaking and he made a precautionary landing of the aircraft. Another PHI helicopter pilot close by heard Dutson's communication to the tower and stopped by and picked up the passengers. Thereafter, Dutson obtained permission from supervision to fly the helicopter back to base. Neither at Dutson's termination interview nor at the hearing did Clay explain in what way Dutson used bad judgment in the hydraulic's incident.

Clay testified that the reason for Dutson's discharge is set forth in the personnel status notification form (Resp. Exh. 18) as follows:

Terminated—Damaged a company aircraft as the result of failure to conduct a preflight inspection and operated a company aircraft that he is not qualified to operate. Both items are in violation of the company operations manual as well as careless and reckless.

The record reflects that no disciplinary action was taken against mechanic Russell Martin. Indeed, it is not clear to what extent Respondent's investigation of the incident involved Martin. Clay testified that he did not know the amount of damages caused by the incident, but that PHI does not consider the amount of monetary damage to aircraft with respect to disciplinary actions. Instead, Respondent considers the severity of the violation.

It is undisputed that the pilot is the person ultimately responsible for ascertaining that the way is clear for him to safely fly (or hover) a helicopter.

The record reflects that there have been other incidents in which pilots have damaged helicopters, yet the

¹⁶ Dutson testified that although he was not qualified in the sense of part 135 of the regulations of the Federal Aviation Administration, he believed that he was sufficiently qualified to perform a hover check on the aircraft in view of his many hours of flying 206B model helicopters. The L helicopter is six passenger, while the B model carries only four. There are other differences in the aircraft, but Dutson persuasively testified that the operating procedures are virtually identical.

pilots were not discharged. Respondent's director of training, Vernon E. Albert, testified that Respondent does not discharge pilots who commit errors not involving knowing or intentional violation of applicable rules and regulations. Thus, Respondent did not discharge pilot Jimmy Walker whose helicopter sustained damage when the tail rotor blade struck a cable.¹⁷ Walker received only a letter of reprimand. The Walker incident occurred about November 24.

Ted Leete, about February 3, 1977, negligently started his helicopter without removing the intake plugs. This was classified as improper preflight procedure which could have resulted in damage.

On or about December 14 pilot Dana Raaz started an aircraft in temperatures below zero degrees centigrade without following the cold starting procedure. That is, he forgot to place the fuel control lever in the manual position. An engine overspeed resulted. Raaz received a letter of reprimand (G.C. Exh. 9). Albert testified that Raaz was not discharged because his pilot error did not involve intentional misconduct.

At the hearing Respondent introduced records reflecting that 25 other pilots were discharged for violation of rules (Resp. Exh. 13). However, these examples consist mostly of pilots discharged for drinking alcoholic beverages while on duty, or probationary employees because of poor performance, or repeat violations of rules. One pilot, Dat Tan Ho, was terminated on December 26, 1979, not only because he failed to properly shut down the helicopter resulting in an engine overheating situation, but also because he failed to file an incident report on the matter (Resp. Exh. 13-9). Thus, the implication is that pilot Ho sought to cover up his negligence by failing to report the incident.

Conclusion

On brief, Respondent argues that Dutson (as well as Davies and Mitchell) engaged in conduct which not only was technically violative of the rules, but that such conduct could be phrased as an intentional violation in that Dutson was apprised of all the relevant facts and still flew his aircraft. Respondent further argues that the situation of Dutson (and Davies and Mitchell) is entirely distinct from the situations involving pilot error. "If Mr. Leete had been aware of the intake plugs and had failed to remove them, then his situation would be analogous. If Mr. Walker had known that the guy cable was present and in such a location as to cause a rotor strike and still rotated his aircraft, then his situation would be analogous. If Mr. Raaz had intentionally refused to flip his fuel lever from automatic to manual, then his incident would be similar." Respondent argues that Dutson knew that he was not qualified or current in the 206L model aircraft, yet he flew and damaged the aircraft.

Dutson did not intentionally violate any rules of Respondent. Thus, I find that his negligence was nothing more than pilot error. I, therefore, would find that the case of Dutson reflects a disparity of treatment accorded him in comparison as to what Respondent has accorded

to other pilots in the past. Moreover, I note that Respondent issued not even a disciplinary reprimand to mechanic Russell Martin. Even though pilot Dutson had the overall responsibility for maintaining a safe clearance to lift off the helicopter, Respondent never demonstrated before me that it established even to its own satisfaction that it investigated Martin's participation and absolved him of responsibility for placing and leaving the maintenance stand over the left skid of the helicopter.

Most telling of all, however, and the real key to the proof that Respondent seized upon the incident as a pretext in order to discharge Dutson for his activities on behalf of PHPA, is the language used by Vice President and Chief Pilot Clay when he discharged Dutson. On this occasion Clay unwittingly revealed his true motive when he stated, as quoted by Dutson, "That's just the way it is and we just feel *you'd be happier elsewhere.*" There was absolutely no basis for Clay to state that Dutson would be "happier elsewhere." I find that this is a direct reference to Dutson's PHPA activities and reflects the true and real reason for Dutson's discharge. Accordingly, I shall order that Respondent offer reinstatement to Dutson and make him whole, plus interest.

E. Robert C. Mitchell

1. Introduction—Complaint paragraphs 9 and 10 dismissed

As with the other Charging Parties, Mitchell is an experienced helicopter pilot. He began as a helicopter mechanic with the U.S. Army in Vietnam in the 1960's, servicing mostly Bell helicopters, including Bell 206's. He graduated from flight school in January 1972, subsequently becoming an instructor pilot. On leaving the Army in November 1977, he was hired immediately by PHI. His background experience and education include a degree in aviation flight technology and he is classified as an air transport pilot, which Mitchell described as something similar to a master's degree in aviation. With respect to the tests administered by the Federal Aviation Administration (FAA), he scored a 92 on the instrument test and a 90 on the visual flight rules test.

Mitchell was quite active for the Union and had more than one conversation regarding PHPA with Area Manager Shugart, base supervisor for the Houma, Louisiana, base where Mitchell was assigned. In early 1980, apparently around January or February, Mitchell and pilot Hou Whin flew to the Placid Oil Company, a customer of PHI, in Houma, Louisiana. John Cross, transportation manager for Placid Oil Company, spoke to Mitchell and Whin on this occasion. He said that he wanted them to know that if the Union went through at PHI, that Placid was going to drop PHI and Mitchell and Whin would be out of jobs.

Later that same day, Mitchell told Shugart about the conversation. Shugart responded, "That's right. I asked John Cross to talk to you guys about this Union because he's in the oil business, and you obviously don't believe any of us that it's going to destroy the Company and I wanted John Cross to talk to you pilots. I've even asked him to come over here to the base and talk to the rest of

¹⁷ Director of Safety Warren Cadoret testified that "in most cases a rotor strike will indicate some violation of the manual."

the pilots." Shugart impliedly denied this allegation in his own testimony. He conceded, however, that the oil company customers of PHI would question him on occasion to see what was going on. Shugart describes them as curious, and testified that they did not say what they would or would not do if the Union came in. I credit Mitchell regarding this conversation.¹⁸

Mitchell also testified that after the election (which PHPA lost) a lot of the pilots went around saying they had voted for PHI even though Mitchell knew they had voted for PHPA. Mitchell could not stand their insincere reversal, so he specifically told Shugart that he wanted him to know that he had voted for PHPA and was proud of it. This conversation was within the first week after the election. Shugart responded that Mitchell had better walk a fine line because there would not be any second chances. In his own testimony Shugart admitted that after the election Mitchell did say he had voted for the Union and did not want Shugart to believe that he was two-faced. Shugart said okay, that the election was over and it was time to get on to other things. He denied saying that Mitchell had to walk a fine line and would be given no second chances. Based on demeanor factors, I credit Mitchell over Shugart. Moreover, I note that Shugart's admission that Mitchell referred to not wanting to appear two-faced supports Mitchell's version that other pilots, formerly prounion, were now saying they had voted for PHI and Mitchell wanted to disassociate himself from that group of pilots.

In September several pilots were in the pilots' lounge discussing the fact that a prounion pilot, Lonnie Hall, had been discharged. Shugart remarked, "Well, you know there's not going to be any second chances for those guys." In the presence of other pilots (neither named nor numbered in the record), Mitchell said, "Well, in my case you probably wouldn't even give me a first chance, would you?" Shugart looked at Mitchell and said, "That's right, Bob, I wouldn't." Shugart denies making any such statement. I credit Shugart in his denial. Although I have credited Mitchell in some respects over Shugart and other witnesses, in other respects I find Mitchell's testimony to be unpersuasive. I find it unlikely that Shugart would make such an incriminating statement in the presence of many witnesses. Moreover, the General Counsel offered no corroborating testimony from any of the several pilots who supposedly were present. Accordingly, I shall dismiss complaint paragraph 9.¹⁹

Complaint paragraph 10 alleges that on or about October 18 or 19 Respondent, by its supervisor and agent George Park, at its Houma, Louisiana, base, threatened an employee (Mitchell) with discharge because of his union and/or protected concerted activities. The supervisory status of Park is in issue. Testifying in support of

this allegation, Mitchell asserted that on the occasion in question (a weekend when the base supervisor was off duty and lead pilot Park was in charge) Park became angry because Mitchell did not deliver a message properly to another pilot. According to Mitchell, Park said that he was going to get Mitchell if PHI did not get him first. Park allegedly said that he was going to see to it personally that Mitchell was fired because he thought Mitchell was lazy and because of Mitchell's attitude. Mitchell asked what he meant by lazy and Park described an incident. Mitchell told him that he was confused on the incident, and Park said he would check into it. With respect to attitude, Park allegedly said, "You have got the worst attitude here." Mitchell testified that Park was referring to Mitchell being so vocal on behalf of PHPA. However, he subsequently testified that Park did not use the term "union." That about ended the conversation. Two days later, Park supposedly apologized in the presence of other pilots for calling Mitchell lazy, saying that he had checked into the matter and had discovered that there was no foundation for the story he had heard.

Park testified that he had to talk to Mitchell constantly about his playing cards because Mitchell did not want to interrupt a card game in order to service a customer. For this reason, he told Mitchell that he had a bad attitude toward his job and that he "bad mouthed" PHI. Park testified that he was not involved in Mitchell's discharge. He emphatically denied that he ever made an apology to Mitchell in the presence of other pilots of accusing Mitchell of being lazy.

On the occasion when Park talked to Mitchell about the card playing, he said he told him that he and pilot Hou Whin had to decide whether they wanted to make a living playing cards or flying helicopters. Mitchell said that he knew that Park was after his job. Park denied this and said that if he were, he would make a concerted effort at it. Park said, "Every man needs a job, but I think every man should take an interest in keeping it." He again denied that he was after Mitchell's job.

I am not persuaded by Mitchell's testimony on this event. Park struck me as a candid witness in this respect. Moreover, it is undisputed that the pilots would play cards while waiting at the base for assignments. Although Mitchell denied that PHI had any problem with him regarding a reluctance in leaving a card game to service a customer, I do not credit that denial and I credit the version given by Park. Accordingly, I shall dismiss complaint paragraph 10.

2. Mitchell discharged

The events giving rise to Mitchell's discharge occurred on Wednesday, November 5, and Thursday, November 6. On November 5, Mitchell was flying a Bell 206L-1 to an offshore site of Placid Oil Company. As he neared his destination, and while flying in a crosswind, he observed that the helicopter developed a vibration with the intensity increasing. Thinking that the wind had picked up, he turned the aircraft into the wind to see if that would affect the intensity of the vibration, but it did not. In addition to the vibration, Mitchell noticed a banging noise from above and to the rear of the aircraft.

¹⁸ The conversation, outside the statutory limitations period, was not alleged in the complaint and the General Counsel offered it for background purposes only.

¹⁹ Although the foregoing testimony was offered in support of complaint par. 9, the complaint allegation alleges that on several occasions in September Shugart "admonished an employee [Mitchell] for engaging in union and/or protected concerted activities, and instructed said employee to discontinue said activities." No such evidence was offered by the General Counsel.

Mitchell then turned back on course and continued to his destination since that was the closest safety point. After discharging his passengers at the destination site, he had a pilot-mechanic, Royce (Mitchell could not recall his surname), check the helicopter. Mitchell testified that mechanic Royce found what appeared to be a crack in the tail rotor and excessive play in the transmission support mounts and also in the swash plate. Mitchell inspected the components along with the mechanic. Although the mechanic said that there were definite problems with the aircraft, he felt that it was safe to fly back to the Houma base where the mechanics there were better equipped to work on it.²⁰

On returning to the Houma base, Mitchell related the problems to an unidentified mechanic who said that he would fix it, but that Mitchell should not write it up. When Mitchell asked why not, the mechanic repeated his request that he not write it up and promised that it would be fixed that night. In Mitchell's words, "I don't know why they do that. Mechanics are funny. You write something up, they go crazy." As the record reflects, when a pilot "writes up" a helicopter as having a mechanical deficiency, it grounds the aircraft until it receives an airworthy clearance by maintenance. The record also reflects that pilots are required by PHI rules to log all discrepancies (Resp. Exh. 20).

The next morning Mitchell observed from the engineer report sheet that maintenance had been performed on the helicopter the night before. The maintenance sheet (Resp. Exh. 10(a)) indicates that four items of maintenance had been performed. The third item involved removing pylon links and installing "serviceable pylon links." These are support mounts for the transmission of the aircraft which are situated above or on top of the helicopter. The fourth item states that the mechanic checked the swash plate and found it to be within serviceable limits.

According to Mitchell, he took the helicopter on a test flight and immediately observed the vibration and banging noise. On returning to the base, a mechanic walked up and asked how it went. Mitchell informed him that it was still "messed up." The mechanic brought up a maintenance stand, opened up the cowl and remarked that he could see what the problem was. Mitchell climbed up beside him and the mechanic pointed to the transmission restraint mount and said, "This is your problem. That will definitely cause a banging and a vibration." When Mitchell asked why they did not notice it last night, the mechanic replied that he did not know because he did not work last night. Mitchell asked if the mechanic had another one, and the mechanic replied that they had one in stock, but they would have to pull the aircraft into the hangar and it would take about 4 hours to fix because they had to remove the whole transmission.

Mitchell then went to tell Base Supervisor Shugart what had happened, and Shugart replied that he wanted to go for a ride and test it for himself. It is undisputed that at some point that morning Shugart did take the heli-

copter for a test ride with Mitchell accompanying him. According to Mitchell, Shugart agreed that it definitely had a vibration and a banging noise, but explained that the banging noise was coming from a vent which was taped up for the winter time. Mitchell disputed Shugart's assessment of the source of the banging noise.

According to Shugart, about midmorning on November 6, he discovered that Mitchell's helicopter was not flying.²¹ He asked Mitchell what was happening, and the latter replied that he had a vibration in his aircraft. Shugart asked what maintenance was doing about it, and Mitchell replied that they were inspecting the components. About an hour and a half later when Shugart rechecked on the matter and asked mechanic Kenneth Bruning about the aircraft, he learned that Bruning felt the aircraft was airworthy and that he could find no fault with it. Shugart then went to Mitchell and told him that maintenance could find nothing wrong and suggested that he and Mitchell take a test flight to see if they could identify the problem. In his testimony Shugart conceded that it was not unheard of for a pilot or a mechanic to have trouble making a determination. They went on a test flight, with Shugart at the controls. Mitchell told him that there was a banging noise and a vibration. After the test flight of about 15 minutes, while they were seated in the helicopter waiting for the mandatory 2-minute cool down, before turning off the engines, Shugart told Mitchell that he observed nothing more than a slight two vibrations per revolution of the blades.²²

Shugart denied that he heard the banging noise that Mitchell was complaining about. He testified that a "2 per" vibration would cause maps or other papers on the dash to vibrate slightly. He told Mitchell that he had to sign the aircraft off as airworthy and told him that he would fly it all day if he were the pilot. Mitchell replied that he did not want to fly the aircraft. They then went to Shugart's office and talked some more about vibrations in helicopters. Finally, Shugart said that the helicopter was airworthy. "Either you have to fly it, or I have to pick up the phone and call Lafayette and get a pilot down to fly it." Mitchell testified that his statement meant that once he calls Lafayette headquarters, the matter is out of his hands. Shugart did telephone Vice

²¹ On cross-examination he placed the time as around 8 a.m.

²² The term of two vibrations per revolution is described by various witnesses and exhibits as inherent with a two-bladed helicopter. The explanation is rather technical, but it relates to the fact that as each blade rotates past a point, a vibration will be created. A "3 per" vibration theoretically then would be experienced only on a 3-bladed helicopter. When vibration becomes abnormal, it supposedly is referred to as excessive or abnormal, but not as a "3 per" or "4 per" on a two-bladed helicopter. This information is relevant because at one point in his testimony, Mitchell referred to the excessive vibration as a "3 per" and that it was a term Bell Helicopter used for the aircraft because of its nodomatic suspension system for the transmission and rotor. The nodomatic system appears to act as a supershock absorber. On cross-examination Mitchell admitted that technically it is impossible to have a "3 per" in a two-bladed aircraft.

Mitchell also asserted during his cross-examination that the Bell Helicopter manual states that the pilot should never feel any vibration in the model 206L-1 because of the nodomatic suspension, and that the pilot should therefore ground the aircraft for correction if the pilot ever does feel "a vibration." The pages (Resp. Exh. 21) from the manufacturer's manual received in evidence do not support Mitchell's testimony in this respect as we shall see below in the discussion of mechanic Bruning's testimony.

²⁰ Neither party called mechanic Royce as a witness, and none of the passengers, unidentified in the record, testified. The testimony of any of these people could have assisted greatly in the difficult task of resolving the credibility disputes in Mitchell's case.

President Dougherty and informed him that he had a pilot who did not want to fly an airworthy aircraft. Another pilot was sent to fly the aircraft.

Kenneth W. Bruning, Jr., was a junior mechanic in November 1980. At the time of his testimony he had advanced to senior mechanic with a total of 5-1/2 years' service for PHI. He began working for PHI in June 1976 after graduating from Emory Riddle Aeronautical University with an airframe and power plant mechanic license after 18 months of schooling.

Bruning testified that about midmorning on November 6 he was advised by "Operations" that a helicopter was returning with a maintenance problem with a request that a mechanic meet him.²³ Bruning testified that he met Mitchell when he landed, and Mitchell advised that he was experiencing an inflight vibration and asked the mechanic to go for a check flight, which they did.²⁴ The test flight lasted 10 or 15 minutes. Bruning testified that at first the aircraft felt normal to him with no abnormal vibration taking place. "So I sat and concentrated to try to feel the vibration and was able to pick out a slight two per rev vibration in the aircraft." In his testimony Bruning explained that he utilized a technique common with maintenance people by placing a pencil on the dashboard and watching for the amount of movement by the pencil during the flight. He testified that it was a "very slight" two vibrations per revolution. Bruning identified the pages from the PHI maintenance manual for the Bell model 206L-1 (Resp. Exh. 21). In section 65-4, Low Frequency Vibration, page 2 of the exhibit, appears the following statement:

Two per rev (2/rev) vibrations are inherent with two bladed rotor systems and a low level of vibration is always present. . . . An increase in the 2/rev level of the rotor itself can be caused by worn or loose parts in the rotor hub or looseness in the rotating controls. The correction of excessive 2/rev vibrations is primarily dependent upon the mechanic. The pilot cannot determine the exact cause and hence cannot prescribe specific corrective procedures.

Bruning testified that in his experience the foregoing statement from the Bell helicopter maintenance manual is accurate.²⁵

During the test flight Bruning told Mitchell that there was a slight "2 per" present, but that he did not feel the vibration level was unusual or abnormal or that it required any action. Nevertheless, Mitchell insisted that the vibration had not been present until the previous day and inquired as to what would make the vibration suddenly appear. Bruning explained that perhaps he had

started concentrating on the vibration and it then seemed worse than what it actually was. Mitchell still insisted that the vibration had not been present the day before.

On returning to base, Bruning inspected the rotor head, the swash plate area, the transmission restraint area, and other parts. The only discrepancy he noted was a small amount of play in the right-hand spherical bearing of the transmission restraint which would contribute to a "2 per rev" vibration. He testified that in his judgment the play was not excessive or outside the manufacturer's limits, and that the part did not require changing.

Bruning testified that Mitchell did not mention any banging noise or a cracked tail rotor nor excessive play in the swash plate area. Bruning testified that he spent approximately 35 to 45 minutes on the inspection which he described as plenty of time to conduct an adequate visual and hands-on inspection of the aircraft. Bruning testified that Mitchell never joined him during the inspection. Following the inspection, Bruning advised Mitchell of his findings, including the small amount of play in the transmission restraint bearing, and advised him that he did not think the bearing was worn past limits. He told Mitchell that he did not think the part required changing, but that they could go ahead and check into it further that evening. Mitchell seemed to accept the information and then asked how long it would take to change the transmission restraint. "And I told him, myself doing it during the day alone, it would take approximately four to four and a half hours from start to finish." Bruning testified that Mitchell acknowledged that information, but said nothing else. Bruning then left Operations (apparently the office area of or near Shurgart) and went back to his other assigned duties.²⁶

Bruning testified that it is not unusual for there to be an increase of nonspecific complaints by pilots at the end of their hitch. These complaints "require a lot of time chasing down a problem and it's just that there seemed to be more of them on the last day of the hitch than there are during the work week." Bruning stated that he could not explain why that is so, but that it does happen.²⁷ During the rebuttal, stage pilot Dutson explained that it is a common practice for pilots to help the mechanics on their own shift from having to start some lengthy maintenance task on their last day of the work hitch where the problem is something that can wait until the next day for the mechanics of the new hitch to arrive. That is, the pilots are doing a favor for the mechanics on their own hitch so long as the problem is not something which would affect safety.

Some 30 to 45 minutes later, Bruning received a call from the lead pilot wanting to know about the status of Mitchell's helicopter. This surprised Bruning, and he told lead pilot Fay Buck, who called, that he was not working on the aircraft and that the helicopter was free to go.

²³ This is consistent with Mitchell's version that a mechanic met him after Mitchell made his own test flight that morning.

²⁴ Mitchell logically might or might not have asked the mechanic to go on another test flight. Were it necessary to resolve, I would credit Mitchell that no mechanic went on a test flight with him.

²⁵ Sec. 65-2 contains this observation:

Even experienced pilots sometimes make the mistake of concentrating on feeling one specific vibration and conclude that the vibration level is higher than normal when actually it isn't. It just seems so because the pilot is concentrating on it.

²⁶ Bruning's own version is a bit confusing. It would seem that Mitchell would be justified in thinking that Bruning was going to work on the aircraft. While Bruning in fact did nothing further on the helicopter, he never told Mitchell that he deemed the craft airworthy.

²⁷ Pilots and mechanics work a 7-day "hitch" of 12 hours on and 12 hours off duty followed by 7 days off duty.

According to Bruning, he *previously* had notified the lead pilot that the aircraft was ready to fly.²⁸ A short time after this conversation, Shugart approached and asked if Bruning wanted to take another look at the helicopter, and Bruning told Shugart that he had done a thorough inspection on it and did not think it was necessary to repeat the inspection. Shugart asked if Bruning was saying that the helicopter was airworthy, and Bruning replied that without a doubt, yes, it was airworthy.

Bruning testified that later that day he discussed the situation with lead mechanic Earl Brewer. They decided to remove the transmission restraint in order to resolve and put to rest any question about serviceability. They found that the bearing had .004 of an inch axial wear which was still within the limits of .007 set by the manufacturer in section 66-131.3b of the maintenance manual (Resp. Exh. 22). Although Bruning did not know at the hearing whether Respondent replaced the bearing, it appears from the engineering report for November 6 that only the inspection was performed by them (Resp. Exh. 11(a)). However, the same engineering report shows that on that same date mechanic Richard Lawson performed the following work:

Found transmission isolation mount to be worn in bearing areas. Removed isolation (wishbone) mount and installed serviceable mount.²⁹

Mitchell testified that the aircraft he flew did not have an inherent vibration problem, and that it felt "smooth as silk" during flight before he observed the vibration in issue. Although his pretrial affidavit stated at page 7 that the vibration he noticed on November 5 was constant and "in excess of normal vibration," he explained what he meant by that phrase was that it was in excess of normal vibration which other helicopters exhibited and that he did not mean that the helicopter he flew regularly exhibited a normal vibration.

Mitchell also explained that he did not include in his affidavit information about the suspected crack in the rotor or the problem with the swash plate. He testified that when he gave his affidavit on January 15, 1981, he forgot to tell the Board agent about those problems.

Mitchell testified that at the end of the test flight, while they were still in the helicopter, Shugart asked him whether he was going to fly it. Mitchell replied that he could not do so because of safety reasons. After they were inside the building, and Shugart repeated the question, Mitchell told him again that he would not fly the aircraft. Mitchell also told Shugart that he was not refusing to fly, but that he was just refusing to fly the aircraft. He asked Shugart to get him another aircraft. Shugart replied that either Mitchell fly that aircraft or he was fired. Mitchell again repeated, "Jim, I'm not refusing to fly. Give me another aircraft." Shugart replied that they did not have another aircraft and that he would have to take that one. At that point, according to Mitchell, Shu-

gart made a telephone call, and Mitchell went to get a cup of coffee.

Mitchell testified that the helicopter of pilot Hou Whin is assigned to Placid Oil Company also; that it is the same model 206L-1; that Whin, although asleep in the trailer awaiting an assignment, could have taken the assignment; and that Shugart could have assigned Whin's helicopter to Mitchell to fly that particular mission. Respondent offered no rebuttal to this testimony.

Moments after Shugart's telephone call, the two resumed their conversation, and Mitchell repeated that he was not refusing to fly generally, but only with respect to that aircraft. He testified that he told Shugart that he was not going to fly a helicopter with a "sick rotor head" because if the rotor head goes out, it is a guaranteed fatality.³⁰ Shugart did not say anything, so Mitchell turned around and walked out of the office and sat down outside the office. Moments later Shugart called him back in and told him that he was terminated and to drive to Lafayette to see Vice President Dougherty. Mitchell asked that if he was terminated, why did he have to drive to Lafayette just to be told the same thing. Shugart agreed and said that they could do it there, and he then obtained from Mitchell his key, manual, and identification card. Mitchell had to wait the rest of the day since he was pilot in an airplane pool for a group who lived in Pensacola, Florida.

Later that day, Vice President and Chief Pilot Clay arrived on a general visit. While he was there, he invited Mitchell in to hear his story. When Mitchell reached the point of describing his turn into a crosswind to see if it had a change on the vibration, Clay raised his hand over his head, then slapped his knee and said to Shugart, who was present, that he could see what the whole problem was. "Bob is obviously ignorant of helicopters." Mitchell asked what he meant, and Clay stated that there was no way he could pick up a vibration flying in a crosswind. Mitchell disputed this and told him that a helicopter will feel as if it is about to fall apart if it is flying at maximum gross weight in a strong crosswind. Clay said he had never heard that. Mitchell told him simply to ask the other helicopter pilots. Clay then said that he heard that Mitchell had passed his air transport pilot test. Mitchell replied that he had, but had not yet taken the check ride. Clay asked for the scores, and Mitchell told him 92 on the instrument and 90 on the visual. Clay said those scores were pretty good. He then asked Mitchell to give him the definition of the "*Coriolis effect*." Mitchell testified that he was rather flustered at this even though he just had the question on the test, and asked Clay to start the definition with a couple of words and he would finish it. Clay said he could (would) not do that.

Clay then asked Mitchell if he would accept a suspension, and Mitchell stated that he did not feel he deserved

²⁸ Bruning's testimony raises the factually unanswered question of why lead pilot Buck would be calling Bruning about the status of the aircraft if Bruning already had told him it was ready to fly.

²⁹ Mitchell testified that such replacement on November 6 was after he was discharged.

³⁰ Although Mitchell did not explain this, the record indicates that he meant that the blades could not turn during a fall. That is, there would be no autorotation. In autorotation, even though the engine might be off in an emergency landing, the blades will turn during the fall thereby providing enough lift to slow the descent for a safe landing. The record reflects that pilots receive training in autorotation. Indeed, some do it for kicks (Michel). See also the FAA's publication AC 61-13B, Basic Helicopter Handbook, p. 91, "Autorotation" (1978).

either a suspension or a discharge. Clay then asked him to write a statement telling him about the events and that he would investigate it. Mitchell said he would. At that point, he left the office and went to a place where he wrote out the statement which he then gave to Clay.³¹ Clay told him that he would probably hear something by the following Monday. Thereafter, Mitchell returned to his home in Pensacola, Florida, and the following Monday or Tuesday, Shugart telephoned him and told Mitchell that he was in fact still fired.³² Shugart offered to give an oral recommendation on behalf of Mitchell, but stated he could not put something in writing because that could be used against the Company.

When testifying as the General Counsel's first witness, Chief Pilot Clay stated that the bases for Mitchell's discharge were his insubordination in refusing to fly a helicopter and the additional reason that he was very deficient in his knowledge of aerodynamics in helicopters and specifically in the helicopter he was flying. Finally, Clay added that Mitchell failed to personally inspect the components of the helicopter to look for any potential problems. During Respondent's case Clay identified the personnel status form (Resp. Exh. 19) as the company document reflecting the reason for Mitchell's discharge. The reason stated on the form reads:

Terminated—Found to be very deficient in his knowledge of aerodynamics and of the aircraft to which assigned. Refused to fly A/C deemed airworthy by maintenance and area manager.

The foregoing personnel form is dated (Monday) November 10, 1980, and was approved by "CD." The initials apparently are those of Vice President Carl Dougherty.

Clay testified that after his arrival at the Houma base in midafternoon, it was decided in discussion with Shugart, Dougherty, and Director of Personnel Michel (the latter two apparently by telephone) that Mitchell should be suspended "until we did a more thorough investigation and before we made a final decision on his actions." Clay testified that Mitchell's termination was rescinded and he was placed on suspension, and that Mitchell was brought into Shugart's office so that Clay and Shugart could explain this to Mitchell.³³ Clay testified that he asked Mitchell to describe the vibration and problem that he had in his investigation of the matter.

According to Clay, Mitchell admitted that he did not look under the cowling at the components which might have caused the vibration nor did he inspect any of the alleged defective equipment. Clay testified in conclusionary fashion that when he asked Mitchell several questions concerning vibrations in the helicopter, Mitchell

appeared to have a very great lack of knowledge of the helicopter and its mechanics as well as vibrations. When asked for more detail, Clay testified that he did ask Mitchell specific questions such as the amplitude and frequency of the vibrations. "I don't remember the words he used, but it was very obvious that he didn't understand what caused, apparently, what caused the vibrations in the helicopters, or this helicopter. And especially the fact that he made no effort to inspect the helicopter to see what could have been worn, or damaged that might have caused this vibration."

Clay testified that Mitchell apparently had a lack of interest in helicopters and:

I think this man shouldn't even be flying a helicopter. He admitted that he had never looked under the cowling of that helicopter, when the cowling's been removed, since he was first initially qualified in that helicopter.

Clay explained that the "cowling" is the thin metal material which covers the area of the transmission and engine.

Clay testified that he "may" have asked Mitchell about the *Coriolis* effect because he did ask Mitchell some questions on aerodynamics in which Mitchell appeared deficient. When asked on direct examination what the *Coriolis* effect is, Clay answered:

Well, Coriolis effect is the—is the—as an example, if you shot a cannon ball from the equator of the earth towards the North Pole, it would not traverse a straight course. It would travel in a curved course. And this affects helicopter rotor systems and the vibrations that occur in helicopter rotor systems. A Coriolis effect.

Q: Was he able to explain to you what the Coriolis effect was?

A: No.

One must question whether Clay would have been satisfied with this "definition" had it been expressed by Mitchell.

One definition of the *Coriolis* effect appears at page 107 of the FAA's *Basic Helicopter Handbook*, AC 61-13B (1978):

The tendency of a mass to increase or decrease its angular velocity when its radius of rotation is shortened or lengthened, respectively.³⁴

A more lucid description of *Coriolis*, as it pertains to the example Clay was attempting to cite, appears at Volume 5, "How It Works," *The Illustrated Encyclopedia of Science and Technology*, page 664 (1978):

³⁴ And at p. 15:

CORIOLIS EFFECT might be compared to spinning skaters. When they extend their arms, their rotation slows down because their center of mass moves farther from their axis of rotation. When their arms are retracted, their rotation speeds up because their center of mass moves closer to their axis of rotation.

³¹ Clay also testified that although he asked Mitchell for a report at the time of the suspension, he did not recall Mitchell submitting such a report. I credit Mitchell's version that he in fact submitted a written report.

³² Mitchell asked for the reason, and Shugart replied, "Well, Stan Clay felt that [it was] due to your lack of knowledge of the aircraft."

³³ Director of Personnel James I. Michel testified that he entered the Mitchell case after Shugart's initial contact with Dougherty and Dougherty's instructions to terminate Mitchell. Michel recommended that, because the immediate discharge was not within PHI's standard procedure, Mitchell should be suspended pending a further investigation.

Coriolis and the laws of motion. According to Newton's first law of motion, a body continues to be at rest or in a state of uniform motion (that is, moving in a straight line with constant speed) unless acted upon by a force. If a body appears to move in a curved path to an observer, then, to that observer, there must be a force acting on the body to produce that effect.

When a man throws a ball, he does not allow for the fact that the Earth is rotating beneath him. By the time the ball reaches its destination the Earth has rotated slightly and the ball lands a little to the side of where it was aimed. If the effect were large enough to be seen, it would appear to the man as if an unknown force had made the ball swerve from its course: this is the Coriolis force. It is not so much a "real" force as an apparent force which only exists because of the rotating frame of reference—in this case the Earth.

On cross-examination Clay made another effort to explain the *Coriolis* effect when asked how it applied to the Bell 206L-1:

A helicopter in forward flight tilts its rotor system forward of the mast. That is the mast—assuming the mast is vertical. The rotor tip path plane would tilt forward to pull the helicopter forward. As—because the blades in a hover are in what we call a coning position, that is the tips of the blades move upward and are a little bit closer to the center of mass, when they're under lift than when they're sprayed out, that means that there has to be acceleration and deceleration force caused by Coriolis effect. Whereas, the blade moving in the high portion of the plane, that is, over the rear of the helicopter, would have to travel—the blade tip at the rear of the helicopter would have to travel at a slightly faster rate than the blade tip on the forward half of the rotor disc.

What Clay was attempting to say seems to be that at different stages of flight the tip path plane of the blades, if pictured as a circle, disc, or inverted cone, will tilt forward, or away from, the mast. That portion of the tip path plane which is tilted up closer to the mast will be turning slightly faster than the tip of the blade which is sweeping lower and away from the mast. At times the (downward) tilt will be forward (and the blade tip at the front of the aircraft will be going slower while the rear tip will be in a higher plane or arc and sweeping faster because it has a closer angle or distance to the mast), and at other times the tilt will be to the rear.

While this discussion of physics is very interesting, the relevant point is that Chief Pilot Clay revealed his discriminatory motivation regarding Mitchell by his own inability to present a simple, lucid testimonial description of what on earth he was talking about regarding the *Coriolis* effect. He asked Mitchell for a definition of something which Clay could not himself either (1) define or (2) describe (in any understandable way), and then fired him because, in part, he could not recite it. Moreover, it does not appear, and Clay certainly made no attempt to

explain, just what practical relevance this knowledge (that the blade tip spins faster when it is closer to the mast) has to do with one being a competent and safe helicopter pilot.³⁵

None of the record evidence regarding discharges of pilots reveals a single instance of a pilot outside his probationary period being discharged, even in part, because he did not answer a question regarding aerodynamics to management's satisfaction. Indeed, there is no evidence that management has ever quizzed an experienced pilot in such a fashion—even when pilots have damaged aircraft through pilot error.

Conclusion

In Mitchell's case there is no witness I credit completely, but I do credit Mitchell in general. Moreover, Respondent's own records reveal that an important component in relation to vibration—the "wishbone" transmission mount—was replaced on the very day Mitchell was fired for refusing to fly the particular helicopter because he in good faith felt that it had a serious vibration problem. As both testimony and exhibits reflect, it is not unusual for there to be differences of opinion about vibrations or even imagined "excessive" vibrations. Even if Mitchell was wrong, he still, I find, was in good faith.

It is clear that Respondent discharged Mitchell in major part because of his "insubordination" in refusing to fly the helicopter in question.³⁶ However, Director of Safety Cadoret acknowledged that under Part 91.3 of FAA regulations (G.C. Exh. 22; 14 CFR sec. 91.3), the pilot has the final authority to ground an aircraft he feels is not airworthy. Cadoret expressly stated that section 91.3 includes the pilot's assessment that an aircraft is not worthy to take off.³⁷ He testified that when maintenance clears the craft as airworthy, the pilot must again operate the craft before he may again ground it. As a practical matter, Cadoret testified, eventually the pilot and maintenance (sometimes with the assistance of another pilot) agree. In short, Cadoret asserts that a stalemate does not occur.

Yet a stalemate did occur in Mitchell's case. Mitchell testified that not only did he rely upon his commonsense in refusing to fly the particular helicopter, but he also relied upon section 91.3. Indeed, during his conversation with Area Manager Shugart at the completion of the test flight by Shugart, Mitchell referred to the safety factor as one reason as well as "professionally" that he was refusing to fly the helicopter. I find that Mitchell was acting upon the good-faith belief that the helicopter was unsafe because of a vibration problem. It is well settled

³⁵ Actually, it would be unfair to say that Mitchell lacked knowledge about the faster spinning principle. He had momentarily forgotten the definition of a physics term. He was not asked by Clay to explain why the tip path of the blades moves faster when closer to the mast, nor was he asked what practical impact that has (if any) in flying a helicopter.

³⁶ Mitchell's credited testimony that he repeatedly asked for another helicopter, saying that he was not refusing to fly generally, is undisputed. When Respondent declined to assign Mitchell the other available helicopter, it revealed its animus toward him because of his PHPA activities.

³⁷ 14 CFR sec. 91.3 provides:

(a) The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft.

that Mitchell's concern need only have been grounded in good faith. He did not have to be objectively correct for his refusal to fly the helicopter to be protected.³⁸

And it is clear that the other pilots expressed concern and disbelief in the pilots' lounge that very day on learning of the reason for Mitchell's discharge. Thus, according to Mitchell's credited testimony, pilots were saying to each other, "Did you hear what Mitchell got fired over? And they were going crazy."

In these circumstances, Mitchell was engaged in protected concerted activity in exercising the safety rights granted to all pilots by 14 CFR section 91.3(a), and Respondent violated Section 8(a)(1) of the Act in discharging him for his exercising that safety right. *Alleluia Cushion Co., Inc.*, 221 NLRB 999 (1975).³⁹

I also find that a major reason Respondent discharged Mitchell was the pilot's PHPA sentiments and activities. Indeed, Chief Pilot Clay went out of his way to seek a basis for discharging Mitchell—after earlier firing him prematurely and contrary to PHI's own policy of suspension pending an investigation. The grounds Clay invented and used as pretexts were (other than the insubordination-refusal), first, ignorance of aerodynamics and, second, a lack of interest a normal pilot would have in looking at the suspected components.⁴⁰ I find the second to be factually false, and Clay demonstrated the first is ludicrous by virtue of his own ineptitude in answering the same question he posed to Mitchell.

Accordingly, I shall order that Respondent reinstate Mitchell and make him whole, with interest.

F. Robert J. Davies

A pilot for 20 years, Davies started flying with the Civil Air Patrol when he was 14 years of age. In 1967 he entered helicopter flight training in the United States Army. He thereafter flew for 1,000 combat hours in Vietnam. Upon his return to the United States, Davies was assigned as an instructor pilot at Fort Rucker, Alabama, for approximately 14 months. After leaving the military he worked for a year as a ferry pilot under contract with the Iranian government flying helicopters from Milan, Italy, to Tehran, Iran. Following that experience, he entered Emory Riddle Aeronautical University where he enrolled in aeronautical engineering. At the same time he enrolled in flight lessons for fixed wing aircraft. He ultimately received his commercial airplane pilot license, his airplane instrument license, and a multiengine airplane license. Following completion of his flight training, he was employed in Southeast Asia with

Air America Incorporated as a contract pilot for the United States Government. He thereafter became employed with PHI on October 30, 1974, until his termination on November 26, 1980. At the time of his termination, Davies was assigned as a line pilot at the Sabine Pass, Texas, base where Byron Stone was the area manager. Davies flew the Bell model 212 helicopter for PHI.

In May or June 1979, Davies became vice president of PHPA, and thereafter distributed leaflets and handbills and mailouts to pilots at different bases within PHI. He attended the December 1979 representation hearing in Case 15-RC-6578, although he did not testify.

One evening in July 1980, Davies had a discussion with two other pilots in which Davies contended that there were inequities in Respondent's check ride system. This was at the Intracoastal City, Louisiana, base of PHI. The following morning, Intracoastal Area Manager Lee Bundy engaged Davies in conversation. After making reference to the topic that Davies and the other pilots had discussed the previous evening, Bundy said he thought at first that Davies was just misled by the people with PHPA, but that now he thought that Davies was vicious and a cancer and he would try to get Davies out of the Company any way he could including, if necessary, kicking Davies "in the balls" to do it. Davies replied that he was happy flying for PHI and intended to stay with the Company.⁴¹

Complaint paragraph 8(a) alleges that in September 1980 Area Manager Lee Bundy, at Respondent's Intracoastal base, informed employees that wage increases would be withheld because of their union activities. Complaint paragraph 8(b) alleges that in September 1980, at the same location, Lee Bundy "impliedly denied future wage increases because of the Respondent's financial resistance to the Union."

Davies explained that at the beginning of each hitch the base manager has a meeting with the pilots to inform them of what has happened during the last hitch, to describe weather conditions, and to notify them of other problems or notes from the Company. On one Monday in September 1980, following a Friday supervisors' meeting which he had attended, Bundy began his discussion with the pilots by telling them what had happened the previous week and described weather conditions and other company matters. He then stated that there would be no 5-percent raise in the near future because PHI was not sure how much money it was going to make that quarter. When Davies smiled at this, Bundy seemed to become upset, pointed to Davies and said, "Yes, you." Bundy then stated, "You and the Union are the reason that we're not going to get a raise because we had to spend so much money on you." In the presence of some 30 to 35 pilots in the room, Davies rose and told Bundy that he did not want him to speak to him in that fashion in the presence of his peers. Bundy told Davies not to laugh while he was talking. Davies responded that he had not made a sound and there were 30 witnesses there to prove it. At this, Bundy turned and walked back into his office.

³⁸ There may even have been an objective basis for Mitchell's concern when one recalls that on November 5 the transmission pylons were replaced (Resp. Exh. 10(a), item 3), and on November 6 the transmission isolation (wishbone) mount was replaced (Resp. Exh. 11(a), item 3). The wishbone mount was replaced the same day Mitchell was fired, but after his termination (Mitchell).

³⁹ In effect, Mitchell was engaged in a strike with respect to his helicopter, and his strike was protected by 14 CFR sec. 91.3(a). Respondent could not lawfully fire an employee engaged in a protected strike.

⁴⁰ Respondent seeks to have it both ways on the second point. On the one hand Clay faults Mitchell for not trying to "make like" a mechanic, yet on the other hand it faults him and Davies when they sought to exercise their mechanical knowledge and experience (i.e., Mitchell that his craft was unsafe to fly, and Davies that his helicopter was safe to fly).

⁴¹ The General Counsel offered the evidence only for the background purposes of knowledge and animus.

Davies testified that in the 6 years he was with PHI the Company generally gave two 5-percent pay raises each year, one near the beginning of the year in February or March and the other near the end of the year in September or October.

Warren H. Bahlke, a line pilot with PHI for nearly 7 years at the time of his testimony, gave a similar account of the statements by Bundy and Davies as described above.

Bundy denied having any conversation with Davies in which he allegedly told Davies that the pilot was vicious and a cancer and that Bundy was going to get rid of him, and Bundy further denied telling the pilots in September that they were not going to get a raise. In fact, Bundy testified that in September he told the pilots that they were going to receive a 5-percent raise effective in November.⁴² As the General Counsel did not offer any evidence rebutting the assertion by Bundy that the pilots were going to receive the raise in November 1980, I conclude that PHI did in fact announce the raise on September 2 and did in fact grant a 5-percent pay increase in November 1980.⁴³ However, this does not necessarily resolve the issue of whether Bundy made the remarks attributed to him by pilots Davies and Bahlke. Because of their superior and convincing demeanor, I credit Davies and Bahlke over Bundy. Moreover, it is entirely possible that at one point in August PHI might not have known whether it was going to grant its usual 5-percent pay increase, and Bundy so told the pilots; and yet at a later point in August PHI determined that it could grant such a pay increase at which point, on or about September 2, Bundy so told the pilots.⁴⁴

As described by Chief Pilot Clay, the personnel status notification form describes the basis for the November 25 discharge of Davies as follows (Resp. Exh. 17):

Terminated—Damaged aircraft landing gear because of improperly positioning of aircraft on landing pad, then after observing that the aircraft was damaged he took it upon himself to fly the aircraft back to the base without a maintenance release.

On November 20, Davies flew a Bell 212 helicopter to the helipad of Sun Gas Oil Company, located about 4 miles from the Sabine Pass base, to pick up passengers. The Sun Gas helipad was not an offshore location. It is undisputed that Davies improperly positioned the helicopter on landing at the pad so that the rear of the left skid was not completely on the pad. The skid of the Bell 212 helicopter is made of a hollow aluminum tube approximately 3 inches in diameter. The helipad was elevated about 12 inches above the surface of the surrounding ground and skids are about 8 to 10 feet long. As the passengers began loading baggage on the helicopter, the aircraft began to tilt back. Davies immediately increased

the power of the helicopter, had the passengers disembark, moved the aircraft fully onto the pad, and notified the Sabine base tower that he suspected some damage to the aircraft and that he was going to shut it down, check it out, and call them back when he found out what was wrong. After shutting down the engine Davies inspected the aircraft and discovered a fracture just forward of the aft left cross-tube on the left-hand main skid gear approximately 20 to 30 percent of the diameter of the skid. Davies testified that the skid was not bent from its horizontal plane.⁴⁵ On determining that there was no major structural damage to the skid, Davies returned to the aircraft, called the tower operator, and told him to tell the base supervisor and the lead pilot that he had cracked the skid and was bringing the aircraft back to the Sabine Pass base. Davies then lifted off and flew the approximate 2- to 3-minute flight (4 miles) back to the Sabine Pass base.

On landing at the Sabine Pass base, Davies permitted the engines to cool down. While that process was being accomplished, Area Manager Stone, lead pilot Scott, and an unidentified mechanic walked to the left side of the aircraft and inspected the damage. Stone came to the left side of the aircraft as Davies was getting out, and Davies commented that he would just pack his bags and keep on walking. Stone said no, that he would not worry about it, that it was just another incident as far as he was concerned.⁴⁶ When Davies asked if he should fill out an incident report then, Stone replied in the negative because they were running late. Stone assigned Davies another helicopter and Davies returned to the Sun Gas pad, picked up the passengers, and completed the assigned flight.

As earlier noted, both Stone and Scott testified that the skid not only was fractured, but also was bent from 8 to 12 inches off its horizontal plane. While the witnesses described this as a "V" bend in the horizontal tube, it seems that they actually meant an inverted "V." This is so for two reasons: first, Stone did say that the skid had been bent "up" some 8 to 12 inches approximately 3 feet forward of the aft cross-tube; secondly, if the skid in fact was bent, it would seem to have occurred by the process of the edge of the concrete pad acting as a fulcrum at the point of the fracture with the weight of the baggage and passengers toward the rear from the fracture point applying weight and downward force toward the rear

⁴⁵ As we shall see, this is disputed by Respondent's witnesses, Area Manager Byron Stone and lead pilot Jim Scott.

⁴⁶ Davies testified in a persuasive fashion, and I credit his testimony that he did permit the engines to cool down for the required 2-minute period, and I do not credit the testimony of Stone and Scott that Davies quickly jumped out of the aircraft on landing and made his remark about packing his bags and leaving.

Davies explained that his remark about packing his bags and leaving had to do with a standing joke among the pilots that everytime one of the pilots associated with PHPA was terminated, there was a beer party at the Lafayette headquarters. I interpret this to mean that Davies was stating that he figured he would be discharged over the incident because of his PHPA association. Stone testified that although Davies made some remark about being terminated on leaving the aircraft, he, Stone, did not recall making any answer to that comment. Instead, he simply told Davies to take another aircraft and finish the flight assignment. I credit the version of Davies, including the portion that Stone told him not to worry about the incident.

⁴² Director of Personnel James I. Michel testified that the announcement (apparently companywide) was made on September 2.

⁴³ Accordingly, I shall dismiss complaint par. 8(b).

⁴⁴ However, I shall dismiss complaint par. 8(a) because of the variance between the allegation that Bundy's remarks occurred in September and my finding that he made them in August. It is not surprising that Davies and Bahlke were off as to the month of the remarks yet still be correct, as I find, that the incident occurred.

and behind the fracture point. While this is certainly a logical possibility, it also seems possible that Davies correctly testified that the skid itself was not bent from the horizontal plane in the sense that the ends of the skid were horizontal. That is, any bend of the skid was confined to the one location of the skid and did not affect either end of the skid. This would be so because each skid is attached to the helicopter by two cross-tubes, one fore and one aft. Because the location of the fracture appeared between the two cross-tubes, it is quite possible that some bending did occur (although perhaps not the full 8 to 12 inches as described by Stone and Scott) at the fracture site. Although Scott also described the bend as 8 to 12 inches, he also described it as a curve. In synthesizing the testimony of the witnesses on this topic, I find that in addition to the fracture, there was some curve indentation at the fracture site, but significantly less than the 8 to 12 inches off horizontal described by Stone and Scott, and that the major portion of the skid remained on a horizontal plane.

Stone and Scott testified that about 1,500 pounds of fuel were unloaded from the helicopter. This was done for two reasons. The first was safety and the second was in order to lighten the load that a crane at the nearby Michigan-Wisconsin facility would have to lift when lifting the helicopter in order for the damaged skid to be removed and a new skid bolted on. With respect to the safety factor, Stone and Scott testified that in their opinion the helicopter, with its load of fuel, would create a dangerous safety problem in the event the pilot had to do a run-on landing. This is explained as becoming possibly necessary in the event that one of the two engines became inoperative during flight. Thus, had one of the engines gone out of service on the short flight back to the Sabine Pass base, Respondent contends that pilot Davies would have been in the dangerous position of trying to do a run-on landing with a damaged skid and a load of fuel. The helicopter could not be hover-landed with only one engine, and the run-on landing would involve a landing similar to that of a fixed wing aircraft flying in at a relatively low speed and sliding to a stop with one engine working. The danger factor would exist if the skid were to collapse during such a run-on landing. If the skid were to collapse, this in turn could cause the whirling rotor blades to strike the ground, possibly resulting in further substantial damage to the helicopter or injury or death to the pilot. Although Davies disputed the fact that the damaged skid would be in any danger of collapsing, it appears that Stone and Scott make the better argument with respect to the potential hazard. On the other hand, I find that Davies was of the honest opinion that there was no danger of the skid collapsing.

In short, I find that Davies committed pilot error by mistakenly landing the helicopter in an incorrect position on the helipad at the Sun Gas Oil Company location. As will be seen, I find an additional pilot error in Davies' failing to recognize the potential danger of having to land with a damaged skid and, therefore, discussing this with supervision or maintenance before leaving.

Chief Pilot Clay testified that after seeing the incident report filed by Davies on the matter, he conducted an in-

vestigation. He first contacted Area Manager Stone and then discussed the incident with Director of Personnel Michel. Davies was then interviewed on Tuesday, November 25. According to Davies, he met with Clay and Vice President Carl Dougherty.⁴⁷ Davies testified that the conversation began with Clay saying he thought this was a very serious incident and wanted to know how Davies could make such a poor error in judgment with a pad that size. Clay stated some measurements for the pad, and Davies said the measurements did not sound right to him. He then asked Davies why he moved the aircraft with the passengers on board. Davies informed him that the passengers had disembarked before he repositioned the helicopter. This seemed to surprise Clay, for he said that such fact was contrary to what he had heard. Clay again reiterated his statement that he considered it a very serious incident and asked Davies to step outside so that he and Dougherty could make a decision.

About 5 or 10 minutes later, Dougherty left and Davies was called in so that just he and Clay were in the latter's office. Clay said he felt it was a very serious incident and that he was going to terminate Davies for it. Davies said he could not believe that and asked to see his flight file. Clay showed the file to him, and Davies observed that there was nothing contained therein besides normal progress and aircraft checkout reports along with a slip saying he was late for work 1 day approximately 4 years previously. Davies then said he could not believe that Clay was going to fire him over the incident when there was nothing else against his record.

Clay repeated his position that it was serious enough to terminate Davies. He then asked Davies if he had an airframe and power plant license. (This is the license which a mechanic is required to possess before he may work on an aircraft.) Davies said he did not, and Clay asked how Davies could make the judgment that the helicopter was airworthy. Davies answered that his judgment was based on his experience working with that type of aircraft, that the damage appeared to be minor, and that is why he flew it back to the Sabine Pass base. Clay also wanted to know why Davies did not wait for Stone and a mechanic to come to the aircraft. Davies responded that on neither of the calls he had made to the Sabine tower was any message given to him that a maintenance team was coming to the site of the incident.⁴⁸ Clay made no response to this that Davies could recall.

While a pilot for PHI, Davies received a 2-year safety award, another safety award after 5 years, and in October 1980 he received a certificate from the FAA commending him on his professionalism and safety as a pilot

⁴⁷ Clay's testimony suggests that it was Michel who was present rather than Dougherty. There is no specific rebuttal to this testimony of Davies that Dougherty was present even though Clay, Dougherty, and Michel testified after Davies. (Clay additionally testified as the first witness for the General Counsel.) In his own testimony Michel did not assert that he was either present or involved in any way with respect to the discharge of Davies. Clay specifically testified that he consulted with Michel. I credit Davies that both Clay and Dougherty were present.

⁴⁸ Stone testified that, when Davies first reported that he suspected damage, Stone conferred with Scott and they decided that Stone and a mechanic would go to the Sun Oil location to inspect the damaged helicopter and that Scott would take another helicopter and complete the mission.

following an instrument check ride with an FAA inspector.

Testifying that he was primarily responsible for the decision to discharge Davies, Clay testified as follows:

Q: Would you describe, please, the reasons you made that decision?

A: He violated a regulation. He flew a helicopter that was not—released the helicopter after it [had] been damaged without the authority [to release] the aircraft for flight.

Q: And who would have that authority?

A: A licensed mechanic qualified on the aircraft.

Conclusion

Although Respondent argues that Davies should have obtained a "maintenance release" before he flew the helicopter to the Sabine Pass base, and further argues that such a requirement is part of its policy, at no point did it identify any section of its operations manual (Resp. Exh. 6) which describes such purported policy, nor has it identified any other documentary support that such a release is required. Pilot Dutson testified that deciding to fly an aircraft which has sustained some damage is a question of judgment depending upon the particular situation. Warren J. Cadoret, Jr., director of safety for PHI, testified that there is no document captioned a "maintenance release," and that it is a term referring to a mechanic approving the helicopter as airworthy. Furthermore, Cadoret testified he is not sure if PHI's policy, that a pilot is to contact maintenance if he sustains damage to a helicopter while in the field, is specifically set forth in any PHI manual provision.

Pilot Bahlke similarly testified that it is a matter of pilot judgment, although Bahlke testified that if there was damage of any extent to the aircraft beyond, for example, a broken window or a broken door latch, then he would call maintenance.⁴⁹

Respondent introduced several issues of its safety newsletter, Rotor Tips, in which various incidents are described in which the pilots called maintenance. However, in none of these articles is there a flat statement that the pilot is required by any rule of PHI or the FAA to call for maintenance. Instead, examples are set forth apparently on the basis of educating pilots as to the types of situations in which they should call for maintenance. In other words, it appears that it is a matter for the educated judgment of the pilot as to when maintenance should be called.

Respondent, of course, may disagree with a pilot's judgment decision that a release by maintenance is unnecessary. Such a disagreement, however, would not be based on "a willful violation of regulations" which is one of PHI's four grounds for discharging one of its employees. Thus, at page 9 of PHI's policy manual (Resp. Exh. 9(a)) the four examples of employee termination are: resignation, release (for inability to perform the job, not adaptable for the job, or insufficient initiative for further

advancement), layoff (reduction in force), and discharge. The item for discharge reads:

Discharge: An employee may be discharged if he breaches Company standards of conduct, honesty, work habits, performance, attendance, *willful violation of regulation*, or knowingly falsifying official records such as expense vouchers, timesheets, flight records, maintenance records, etc., or for insubordination. [Emphasis supplied.]

Davies specifically testified that in his opinion he thought clearance from maintenance was unnecessary for him to fly the helicopter back to the Sabine Pass base, and on rebuttal he expressly testified that he never intentionally violated company policy.

The General Counsel argues that if Davies had violated a rigid and inflexible company regulation by not calling maintenance, then surely Stone or Scott would have at least asked him why he had not called maintenance when he returned to the Sabine Pass base. As the General Counsel points out, the testimony of Davies is undisputed that the first time Clay mentioned a maintenance release was *after* Clay had informed Davies that the decision had been made to terminate him. In the discussion which followed it became clear that Clay was under the erroneous impression that Davies had moved the helicopter while passengers were on board after initially suspecting damage. Davies was then asked to step outside to allow Clay and Dougherty to discuss the incident. It was on Davies' return to Clay's office when the maintenance release justification was put forward by Clay.

I find that the reasons advanced by Respondent for the discharge of Davies are pretextual in nature and reveal Respondent's unlawful motivation. Moreover, it seems clear that Respondent would not have discharged Davies in the absence of this unlawful motivation. This is so because pilot error, in the absence of an intentional violation of regulations, is not in keeping with Respondent's admitted policy nor is it consistent with Respondent's written policy manual on discharge quoted above. Examples of discharges of pilots by Respondent in the past wherein pilot error was involved almost invariably involve a combination of a pilot error plus an *intentional violation* of PHI rules or FAA regulations. Conversely, pilots have not been discharged where only pilot error was involved even though such error caused expensive damage and endangered the safety of the pilot and passengers. A good example of the latter is the 1975 incident in which pilot Bahlke caused \$15,000 damage to a helicopter and barely missed crashing the helicopter, with its passengers, into the Gulf of Mexico when he landed hard on the offshore site helipad of a PHI customer. At the hearing, Bahlke admitted that he used poor technique, but that he did not violate any company regulations or FAA regulations. Even though his incident was investigated by Respondent's accident board, he received no discipline whatsoever. Although Bahlke was an open supporter of the Union during the campaign, his demeanor was persuasive, and I credit his testimony.

⁴⁹ The implication of Bahlke's testimony is that he might well call maintenance if his helicopter were to sustain a fractured skid as did that of Davies.

In light of the foregoing, I find that Respondent, by discharging Davies, violated Section 8(a)(3) of the Act, and I shall order it to offer him reinstatement and to make him whole, plus interest.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. At all relevant times, the Union was a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(a)(1) of the Act by unlawfully notifying an employee that he was being transferred, and thereafter transferring him, in reprisal for his union and/or protected concerted activities; informing an employee that his transfer opportunities were being withheld as punishment for his union activities and contemporaneously denying him preferred transfer opportunities because of his union sentiments and activities; and informing an employee that job transfer opportunities would be continually withheld because of his union and/or protected concerted activities.

4. Respondent has violated Section 8(a)(3) and (1) of the Act by discharging Richard N. Dutson on June 26, 1980; Robert C. Mitchell on November 6, 1980; and Robert J. Davies on November 25, 1980.

5. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent has not violated Section 8(a)(1) of the Act as alleged except as set forth above.

THE REMEDY

Having found that Respondent has engaged in the unfair labor practices set forth above, I shall recommend that it be ordered to cease and desist therefrom, to take affirmative action designed to effectuate the policies of the Act, and to post signed and dated copies of an appropriate notice to employees.

In view of the foregoing, I shall recommend that Respondent be ordered to offer Richard N. Dutson, Robert C. Mitchell, and Robert J. Davies immediate and full reinstatement to their former jobs and to make them whole for any loss of earnings, plus interest, which they may have suffered. Backpay shall be computed in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁵⁰

The Respondent, Petroleum Helicopters, Inc., Harahan, Louisiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Notifying employees that they are being transferred in reprisal for their union and/or protected concerted activities, and thereafter transferring them because of such activities.

(b) Informing employees that their transfer opportunities are being withheld as punishment for their union activities, and denying them transfer opportunities because of such union activities.

(c) Informing employees that job transfer opportunities will continue to be withheld because of their union and/or protected concerted activities.

(d) Discouraging membership in Professional Helicopter Pilots Association, or any other labor organization, by unlawfully discharging employees or discriminating against them in any other manner with respect to their hire or tenure of employment in violation of Section 8(a)(3) of the Act.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist Professional Helicopter Pilots Association, or any other labor organization, to bargain collectively through representatives of their own choosing, to act together for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Make Richard N. Dutson, Robert C. Mitchell, and Robert J. Davies whole for any loss of pay that each may have suffered by reason of Respondent's unlawful discharge of each in accordance with the recommendations set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its bases at Cameron, Houma, Intracoastal City, and Lafayette, Louisiana, and Rockport and Sabine Pass, Texas, signed and dated copies of the attached notice marked "Appendix."⁵¹ Copies of such notice, to be furnished to Respondent by the Regional Director for Region 15, and after being duly signed and dated by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by any other material.

by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

⁵¹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁵⁰ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided

(d) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges violations not specifically found herein, including complaint paragraphs 8, 9, and 10.